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March 16 1984

No. 83-1279
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

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SUPREME COURT, U.S.

State of Florida,
Petitioner,
vs.
John Scott Meyers,
Respondent.

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On Writ of Certiorari to the
District Court of Appeal of
Florida, Fourth District

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth District Court of Appeal of the State of Florida correctly construed the Fourth Amendment to the United States Constitution by holding that after police officers have validly searched and impounded an automobile, a second search of that same automobile, based on probable cause, eight hours later while the automobile is still impounded requires a warrant?

[As formulated by the petitioner]

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BRIEF IN OPPOSITION

Respondent, JOHN SCOTT MEYERS, respectfully opposes the application for a writ of certiorari filed by the State of Florida.

SUMMARY OF ARGUMENT

The exercise of the Court's extraordinary certiorari jurisdiction would be inappropriate in this cause because its determination by the unanimous courts below depended upon the unique facts of this particular case, established no new or conflicting principles of law, and involved a perfectly proper evaluation of the reasonableness of a search after consideration of all of the circumstances shown by the record as a whole. There is no reason presented by petitioner that would justify its request for the Court to parse and reparse a record already fully considered by the courts below. This is especially so for petitioner has not for the most part presented to the state courts the arguments it now sets forth in its certiorari petition. Nothing in this case calls for the exercise of certiorari jurisdiction by the Court.

THE REASONS FOR DENYING THE WRIT

Petitioner presents the Court with arguments that in the main it did not present to the state courts and a "question presented" that omits determinative facts. Moreover, petitioner

requests the Court to resolve a factual issue differently than did the unanimous appellate court below. The Court should not accept petitioner's invitation to reparse the record already studied by the lower courts as the case involves a narrow decision that is limited to its unique circumstances -- a fact apparently recognized by the Florida Supreme Court in unanimously declining to review the appellate court's decision. This case thus involves no broad holding, no new principles of law, and no conflict with other decisions. Such a unique case based upon its unique facts is not an appropriate case for the exercise of the Court's certiorari jurisdiction. It also should be noted that the appellate court reversed Mr. Meyer's conviction on two independent grounds, one of which (restricted cross-examination) petitioner does not contest.¹ In short there is nothing about this case that warrants plenary review by the Court.

Petitioner did not present to the lower courts the contentions it now makes to the Court. The first time that petitioner presented most of its current arguments was in its motion for rehearing in the district court of appeal after that court's decision. In that motion petitioner's counsel sought to excuse the failure to properly and timely present its arguments; after first acknowledging that rehearing may not be used to reargue the merits of a decision, petitioner's counsel candidly explained:

It is often contended in rehearing motions which present cases not cited in the briefs that those cases were overlooked by the court. While in a very technical sense that might be true, it is not fair to contend that the court overlooked something which was not brought to its attention in the first place. On the other hand, appellate attorneys sometimes misjudge what issues the court will find troubling, and due to time constraints do not devote as much attention to those issues as it later turns out the court would have appreciated. Just as this court does not have time to write an opinion in every case, so also undersigned counsel unfortunately does not have time to launch a "full court press" (pun intended) in every brief --hence, the length of this motion.

¹ Petitioner tries only to minimize the effect of this independent ground for reversal by arguing that its existence would not make a decision by the Court an "advisory opinion." (Petition for Writ of Certiorari at 13-14). However, the fact that petitioner feels it must try to explain away the "adequate and independent state ground for the decision," *id.*, demonstrates the inappropriateness of this case for extraordinary review by the Court.

(emphasis added) (appendix to certiorari petition at A-29). Such a frank confession of "misjudgment" of the issue is not, however, a sufficient alibi under Florida law. A rehearing motion may not be used to present new arguments not previously raised. Fla. R. App. P. 9.330(a). The district court of appeal properly denied petitioner's rehearing motion.

In addition to the procedural irregularity brought about by petitioner's "misjudgment," the unique nature of the circumstances of this case demonstrate that it is wholly inappropriate for the Court's extraordinary review. That the factual posture of this case is unique is shown by the fact that petitioner has been unable to cite any case that involves the instant situation --despite petitioner's concerted efforts to make up for its misjudgment in the state courts. In this case Mr. Meyers was arrested and taken into custody, his car was taken to the police station and his car was then given a full-blown search by the police as an incident to the arrest. This full search is not at issue. It is the type of station-house search that is involved in the cases relied upon by petitioner. E.g. Chambers v. Maroney, 399 U.S. 42 (1970) (car search later at police station); Illinois v. Andreas, ___ U.S. ___, 103 S.Ct. 3319 (1983) (search of a container that was in the police custody after a controlled drug transaction and that had been previously lawfully searched and known to contain contraband). After the police had fully searched Mr. Meyer's car and had completed their need for his car, the police released the car from their custody and sent it to a private towing service, Sonny's, presumably where it would be claimed by or for Mr. Meyers. Some eight hours later, the police went to Sonny's towing service and searched Mr. Meyer's car again. It is this new search that is at issue in this case. Petitioner fails to mention in its formulation of the "Question Presented" and in its argument that the car had been released to private custody by the police after they were finished with it. Petitioner's factual oversight was not made by the state courts in reviewing this case and should not be made by the Court, despite petitioner's implied urging that the Court redecide the factual issues.

The decision below was based upon an evaluation of all of the facts and all of the attendant circumstances of this case. It establishes no *per se* rule of law, but is, rather, limited to an evaluation of reasonableness under the circumstances of this particular case.² In essence petitioner is only quibbling (belatedly) over the result of the factual determination by the state courts. Factual disputes are best left to the state courts. The Court has recognized the ability of the state courts to make such case-by-case determinations and entrusted those courts with those factual decisions. Stone v. Powell, 428 U.S. 465 (1976). There is no reason for the Court to reparse the record in this case to redetermine the perfectly proper result reached by the unanimous state courts below.

There is nothing in this case that merits the exercise of certiorari jurisdiction by the Court.

² Under petitioner's point of view, "reasonableness" of police actions and intrusions would be irrelevant, and as a matter of law no subsequent police intrusions could ever violate the Constitution. The Court has never sanctioned such an open-ended, *per se* rule. See Cardwell v. Lewis, 417 U.S. 583, 591 nn. 7 & 8 (1974). The courts below did precisely what they were required to do: evaluate the particular facts of the case-at-hand and determine the reasonableness of the police actions. Nothing in such a determination calls for review by the Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

RICHARD L. JORANDBY
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15th Judicial Circuit of Florida
224 Datura Street/13th Floor
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(305) 837-2150

BY *[Signature]* *[Signature]*
CRAIG S. BARNARD
Chief Assistant Public Defender
Counsel for Respondent

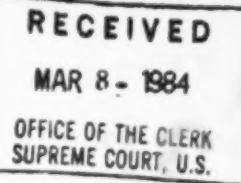
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STATE OF FLORIDA,
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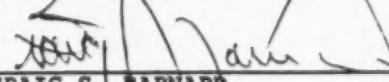
JOHN SCOTT MEYERS,
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, JOHN SCOTT MEYERS, who is now imprisoned in the custody of the Florida Department of Corrections, asks leave to file the accompanying Brief in Opposition to Petition for Writ of Certiorari without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 46 of the Rules of this Court. Respondent has proceeded in forma pauperis at all times in the state courts below. Respondent has attached hereto his affidavit in substantially the form prescribed by Fed. Rules App. Proc., Form 4, and the Rules of this Court.

Respectfully Submitted,

RICHARD L. JORANDBY
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15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

BY 
CRAIG S. BARNARD
Chief Assistant Public Defender

No. _____

IN THE
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OCTOBER TERM 1983

STATE OF FLORIDA,
Petitioner,

vs.

JOHN SCOTT MEYERS,
Respondent.

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, JOHN SCOTT MEYERS, being first duly sworn, depose and say that I am the respondent in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes [] No []

a. If the answer is "Yes", state the amount of your salary or wages per month, and give name and address of your employer.

b. If the answer is "No", state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or from self employment? Yes [] No []

b. Rent payments, interest or dividends? Yes [] No []

c. Pensions, annuities or life insurance payments? Yes []

No []

d. Gifts or inheritance? Yes [] No []

e. Any other sources? Yes [] No []

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months. _____

3. Do you own cash, or do you have money in a checking or saving account? Yes [] No [] (Include any funds in prison accounts)

If answer is "yes", state the total value of the items owned. _____

4. Do you own any real estate, stocks, bonds, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes [] No []

If the answer is "yes" describe the property and state its approximate value. _____

5. List the persons who are dependent upon your support, state your relationship to those persons and indicate how much you contribute toward their support. _____

I understand that a false statement to any questions in this affidavit will subject me to penalties for perjury.

"I declare under penalty of perjury that the foregoing is true and correct."

STATE OF FLORIDA)

COUNTY OF _____)

JOHN SCOTT MEYERS being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

Signature of Respondent

SUBSCRIBED and SWORN to before me this _____ day of _____, 1984.

NOTARY PUBLIC

My Commission Expires: